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13 ASSOCIATION OF AMERICAN

14 INTERNATIONAL MEDICAL

15 GRADUATES, INC.

## 16 UNITED STATES DISTRICT COURT

## 17 DISTRICT OF NEVADA

18 ST. MATTHEW'S UNIVERSITY  
19 (CAYMAN) LTD., a Cayman Islands  
20 company,

21 Plaintiff,

22 v.

23 SABA UNIVERSITY SCHOOL OF  
24 MEDICINE FOUNDATION, a Netherland-  
25 Antilles company; MEDICAL  
26 UNIVERSITY OF THE AMERICAS, a St.  
27 Kitts & Nevis company; EDUCATION  
28 INFORMATION CONSULTANTS, INC., a  
Massachusetts corporation; EDUCATIONAL  
INTERNATIONAL CONSULTANTS, LLC,  
a Massachusetts limited liability company;  
PATRICIA L. HOUGH, M.D., an individual,  
and d.b.a. "Saba University School of  
Medicine"; DAVID L. FREDRICK, an  
individual; PANKAJ DESAI, M.D., an  
individual; ASSOCIATION OF AMERICAN  
INTERNATIONAL MEDICAL  
GRADUATES, INC., a Nevada corporation,  
a.k.a. "aaimg@yahoo.com"; THOMAS  
MOORE, M.D. a.k.a.  
"presaaimg@hotmail.com" and  
"crocdoc2004@netzero.net," an individual;  
SARAH B. WEINSTEIN a.k.a.  
"execsecaimg@hotmail.com," an individual;  
RACHAEL E. SILVER, an individual; and  
DIEDRE MOORE, an individual,

Defendants.

Case No.: CV-S-05-0848-RCJ (LRL)

**DEFENDANT DAVID L. FREDRICK'S  
MOTION TO DISMISS PLAINTIFF'S  
COMPLAINT; AFFIDAVIT OF DAVID L.  
FREDRICK**

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**DEFENDANT DAVID L. FREDRICK'S**  
**MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

Defendant David L. Fredrick ("Fredrick") moves pursuant to Fed.R.Civ.P. 12 (b)(2) to dismiss this matter on the grounds that this Court lacks personal jurisdiction over Plaintiff. In the alternative, Defendant moves to dismiss based on Fed.R.Civ.P. 12(b)(3) as venue is improper. Furthermore, Fredrick moves pursuant to Fed.R.Civ.P. 12(b)(6) for the dismissal of the Second, Third, Fifth and Sixth claims of Plaintiff's Amended Complaint on the grounds that the allegations of the Second, Third, Fifth and Sixth claims fail to state claims upon which relief may be granted.

In support of this Motion, Defendant Fredrick relies upon his Affidavit and the Memorandum of Law which are being filed in support of his Motion to Dismiss Plaintiff's Complaint.

**ISSUES PRESENTED**

- I. **THIS COURT LACKS PERSONAL JURISDICTION OVER DEFENDANT FREDRICK.**
- II. **PLAINTIFF'S CLAIMS MUST BE DISMISSED PURSUANT TO FED.R.CIV.P. 12(b)(3) ON THE GROUND THAT VENUE DOES NOT LIE IN THE DISTRICT OF NEVADA.**
- III. **PLAINTIFF'S SECOND AND THIRD CLAIMS UNDER THE LANHAM ACT MUST BE DISMISSED FOR FAILURE TO STATE A CLAIM UNDER 15 U.S.C. § 1126(b) & (h).**
- IV. **SMU'S FIFTH CLAIM FAILS TO STATE A CLAIM FOR RELIEF UNDER THE NEVADA DECEPTIVE TRADE PRACTICE ACT.**
- V. **SMU'S SIXTH CLAIM FAILS TO STATE A CLAIM FOR RELIEF UNDER THE CALIFORNIA COMPUTER CRIMES ACT.**

**BACKGROUND**

The Amended Complaint in this matter alleges that the Defendants named in the Amended Complaint jointly engaged in a conspiracy to injure the reputation of Plaintiff St. Matthew's University ("SMU"), a Cayman Island British West Indies Corporation, by making

...

...

...

1 fraudulent and defamatory statements on a web site allegedly maintained by Defendant  
 2 Association of American International Medical Graduates, Inc. (“AAIMG”) in Russia.  
 3 Plaintiff’s Amended Complaint (made solely “on information and belief”) makes no specific  
 4 allegation of any statement or act of wrongdoing by Fredrick. Nor does the Amended Complaint  
 5 allege that Fredrick has any personal connection with the State of Nevada. Rather, the Amended  
 6 Complaint alleges that Fredrick is responsible for actions and statements allegedly taken by  
 7 Defendants Thomas Moore, M.D. (“Moore”), Sarah B. Weinstein (“Weinstein”) and Rachael E.  
 8 Silver (“Silver”) in establishing Defendant AAIMG in Nevada (Amended Complaint, ¶¶ 12, 65-  
 9 67) and for information posted on AAIMG’s website which has a domain name registered in  
 10 Russia (Amended Complaint, ¶ 62) and an e-mail address with its server in California (Amended  
 11 Complaint, p. 15 n.7).

12 Fredrick is a resident of Florida and denies that he has ever done business in Nevada and  
 13 denies that he in any way participated in the formation and/or maintenance of AAIMG’s  
 14 corporate existence in Nevada or any other activities alleged in the Amended Complaint.  
 15 (Fredrick, Aff. at ¶¶ 2-6.) Consistent with that denial, the Amended Complaint totally fails to  
 16 allege any specific actions claimed to have been taken by Fredrick in Nevada or elsewhere in  
 17 furtherance of the alleged actions of Moore, Weinstein, Silver, AAIMG or any other defendant.  
 18 Thus, there is no legitimate basis for SMU to request this Court to exercise personal jurisdiction  
 19 over Fredrick in Nevada.

## 20 ARGUMENT

### 21 I. THIS COURT LACKS PERSONAL JURISDICTION OVER DEFENDANT 22 FREDRICK.

23 Plaintiff bears the burden of establishing personal jurisdiction over Fredrick. See KVOS,  
 24 Inc. v. The Associated Press, 299 U.S. 269, 278 (1936). In this Circuit, “personal jurisdiction  
 25 over a non-resident Defendant is tested by a two-part analysis. First, the exercise of jurisdiction  
 26 must satisfy the requirements of the applicable state long arm statute. Second, the exercise of  
 27 jurisdiction must comport with federal due process.” Chan v. Society Expeditions, Inc., 39 F.3d  
 28 1398, 1404-1405 (9<sup>th</sup> Cir. 1994). Nevada law applies since Plaintiff seeks to obtain personal

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jurisdiction over Fredrick in Nevada. Nevada's long arm statute permits the exercise of jurisdiction to the same extent as the Constitution. Nev. Rev. Stat. §14.065 (2001). Therefore, this Court should consider "the constitutional principles of due process which require that [Fredrick] have minimum contacts with Nevada, such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." Rio Properties v. Rio International Interlink, 284 F.3d 1007, 1019 (9<sup>th</sup> Cir. 2002), quoting, International Shoe Company v. Washington, 326 U.S. 310, 316 (1945).

In performing this analysis, this Court conducts a three part test to determine whether specific jurisdiction can be exercised over a defendant. Id. This Court must determine whether (1) Fredrick performed some act or consummated some transaction in Nevada by which he purposely availed himself of the privilege of conducting business in Nevada; (2) SMU's claims arise out of Fredrick's forum - related activities; and (3) the exercise of jurisdiction is reasonable. Id. SMU's Amended Complaint satisfies none of the foregoing criteria.

**A. Purposeful Availment.**

The purposeful availment requirement is designed to ensure that a non-resident defendant will not be called to answer in a forum "based upon random, fortuitous or attenuated contacts with the forum." Rio Properties, 284 F.3d at 1019; Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1985). In a case such as this involving alleged tortious conduct, purposeful availment can only be found where a non-resident defendant's contacts with a forum "are attributable to (1) intentional acts; (2) expressly aimed at the forum; and (3) causing harm, the brunt of which is suffered or which the defendant knows is likely to be suffered in the forum." Rio Properties, at 1019. See also Calder v. Jones, 465 U.S. 783, 788-89 (1984); Core-Vent Corp. v. Noble Industries AB, 11 F3d. 1482, 1485-1486 (9<sup>th</sup> Cir. 1993).

Fredrick has only visited Nevada on two occasions, once for an educational conference and once for a wedding. (Fredrick Aff. at ¶3.) He denies that he is responsible for any conduct complained of by Plaintiff, whether occurring in Nevada or anywhere else. (Id. at ¶6.) Even

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1 assuming that Fredrick is responsible for the actions Plaintiff complains of, an assumption which  
2 is refuted by Fredrick's sworn Affidavit and which is not supported by any factual allegation in  
3 the Amended Complaint other than a conclusory allegation "on information and belief,"  
4 (Amended Complaint, ¶6), the simple action of incorporating an entity in Nevada, which  
5 subsequently registers a domain name which applies to a website hosted in Russia, (Amended  
6 Complaint, p. 16, Ex. II), and email servers located in California (Amended Complaint, p.15 at  
7 n.7) does not constitute substantial, purposely directed activity aimed at the State of Nevada.  
8 See Cybercell, Inc. v. Cybercell, Inc., 130 F.3d 414, 418-420 (9<sup>th</sup> Cir. 1997). The Amended  
9 Complaint contains absolutely no allegation of any substantial conduct causing tortious injury  
10 occurring in or directed towards Nevada. Thus, personal jurisdiction is not appropriate because  
11 the conduct alleged "simply was not aimed intentionally at [the forum state] knowing that harm  
12 was likely to be caused there." Id. at 420.  
13  
14

15 **B. Alleged Forum Related Activities.**

16 The second requirement for personal jurisdiction is that SMU's claims must arise out of  
17 Defendants' Nevada related activities. The only Nevada related activity by anyone alleged in the  
18 Amended Complaint is the establishment of a corporate existence in the State of Nevada. See  
19 Amended Complaint, Exhibit E. No damages flow to SMU simply from the establishment of a  
20 corporation which maintains an email address in California and a domain name in Russia.  
21 Rather, the damages claimed by SMU allegedly flow from the conduct of AAIMG in placing  
22 information from an unidentified location on the website which allegedly caused SMU to lose  
23 students at its schools located in the Cayman Islands and Maine. The wrong which SMU  
24 allegedly suffered does not arise from the existence of a corporation in Nevada but from  
25 AAIMG's posting of information on its website, which is not alleged to be hosted in Nevada.  
26 There is no allegation that information was authored or posted by anyone acting within the State  
27 of Nevada. Moreover, Fredrick specifically denies that he had any involvement in any activity  
28 in connection with AAIMG or its website anywhere. (Fredrick Aff. at ¶4.) Thus, there is no

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1 allegation or proof that Fredrick's "intentional conduct [in Nevada] was calculated to cause  
2 injury to [SMU in Nevada]." Calder v. Jones, 465 U.S. 783, 791 (1984). There also has not  
3 been any showing that the allegedly wrongful acts were aimed at Nevada residents. In the  
4 absence of such a showing, this Court lacks personal jurisdiction over Fredrick. See Bancroft of  
5 Masters Inc. v Augusta National, Inc., 223 F.3d 1082, 1087 (9th Cir. 2000).

6 **C. Reasonableness.**

7 In determining whether it is reasonable for a Court to exercise personal jurisdiction over  
8 a defendant, this Court considers seven (7) factors:

9 (1) the extent of a defendant's purposeful interjection; (2) the  
10 burden on the defendant in defending in the forum; (3) the extent  
11 of conflict with the sovereignty of the defendant's state; (4) the  
12 forum state's interest in adjudicating the dispute; (5) the most  
13 efficient judicial resolution of the controversy; (6) the importance  
14 of the forum to the plaintiff's interest in convenient and effective  
15 relief; and (7) the existence of an alternative forum. See Core-  
Vent, 11 F.3d at 1488. As no single factor is dispositive, a court  
must balance all seven.

16 Rio Properties v. Rio Intl. Interlink, 284 F.3d 1007, 1020 (9<sup>th</sup> Cir. 2002).

17 The allegations in the Amended Complaint satisfy none of these criteria with respect to  
18 Fredrick. As demonstrated by Fredrick's Affidavit, Fredrick has only been to the State of  
19 Nevada on two occasions, for an educational conference and a wedding. (Fredrick Aff. at ¶3.)  
20 Fredrick is a resident of the State of Florida. (Id. at ¶2.) He has no business, no residence and  
21 no business interests in the State of Nevada. (Id. at ¶3.) His home is located in Florida and his  
22 business is located in the Caribbean and Massachusetts. (Amended Complaint, ¶3f, 31 and 33.)  
23 Fredrick has no relationship and never has had any relationship to Nevada and thus it would be  
extremely burdensome for Fredrick, a resident of Florida, to defend in this forum.

24 Similarly, Nevada has no interest in resolving this dispute. The conduct allegedly  
25 engaged in by the other Defendants was not alleged to have had any impact on anyone in  
26 Nevada. SMU also has no overriding reason for maintaining the action in Nevada. None of the  
27 alleged primary actors reside in Nevada. Indeed, none of the parties are located anywhere near  
28

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1 Nevada. The major parties to this case, SABA, MUA and SMU, are all located in the Caribbean.  
2 The damages allegedly suffered by SMU (the loss of students) would be suffered at its campuses  
3 in the Caribbean and in Maine and the witnesses and evidence related to such damages would be  
4 in the Caribbean and in Maine. It is therefore far more efficient to resolve this matter either in  
5 the courts of Florida, where the Defendants can be located and which is located near the  
6 Caribbean, or in Maine, where SMU has a campus, or in one of the foreign countries which has  
7 jurisdiction over these claims.  
8

9 In balancing these factors, this Court must weigh heavily the total lack of interest that  
10 Nevada has in this dispute, as the alleged conduct was not targeted at any residents of Nevada  
11 and caused no injury in Nevada. See Core-Vent Corp. v. Nobel Industries AB, 11 F.3d at 1486.  
12 (No personal jurisdiction in California where statements into California concerned an enterprise  
13 with a worldwide market and thus were not directed at California or California residents.) For  
14 all of the foregoing reasons, this Court should dismiss the claims against the Fredrick because of  
15 the lack of personal jurisdiction over those claims.  
16

17 **II. PLAINTIFF'S CLAIMS MUST BE DISMISSED PURSUANT TO FED.R.CIV.P.**  
18 **12(b)(3) ON THE GROUND THAT VENUE DOES NOT LIE IN THE DISTRICT**  
19 **OF NEVADA.**

20 Plaintiff alleges that venue is appropriate in the District of Nevada pursuant to 28 U.S.C.  
21 §§1391(a) and (b).

22 28 U.S.C. §1391(a) provides:

23 A civil action wherein jurisdiction is founded only on diversity of  
24 citizenship may, except as otherwise provided by law, be brought  
25 only in (1) a judicial district where any defendant resides, if all  
26 defendants reside in the same State, (2) a judicial district in which  
27 a substantial part of the events or omissions giving rise to the claim  
28 occurred, or a substantial part of property that is the subject of the  
action is situated, or (3) a judicial district in which any defendant  
is subject to personal jurisdiction at the time the action is

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commenced, if there is no district in which the action may otherwise be brought.

\*\*\*

28 U.S.C. §1391(b) provides:

A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

The Amended Complaint fails to allege the facts necessary to support a claim that 28 U.S.C. §1391 (a) or (b) authorizes venue in this District. First, venue does not lie under 28 U.S.C. §§1391(a)(1) or 28 U.S.C. §1391(b)(1) because all defendants are not alleged to reside in this District.

Second, venue does not lie under 28 U.S.C. §1391(a)(2) or (b)(2) because the Amended Complaint does not allege that a “substantial part of the events giving rise” to the claims alleged occurred in Nevada. Although the Amended Complaint makes allegation concerning activities allegedly taken by AAIMG, Thomas Moore, Sarah Weinstein, Rachael Silver and Diedre Moore who are alleged to have Nevada business addresses (Amended Complaint ¶5), it does not allege that any allegedly offensive behavior in connection with AAIMG’s website which is hosted in Russia (Amended Complaint, ¶62), took place in the District of Nevada. Indeed, the wrongful actions are alleged to actually have been taken not by AAIMG or its officers but rather by Defendants Hough, Fredrick and Desai, none of whom are alleged to be residents of Nevada or to have ever actually performed any actions within the District of Nevada. See Amended Complaint, ¶¶3f and 3g, 48-72. Thus, the Plaintiff’s Amended Complaint contradicts its efforts

1 to allege venue under 28 U.S.C. §§1391(a)(2) and (b)(2) by actually alleging that the conduct  
2 complained of was carried on by individuals and entities with no contacts with the District of  
3 Nevada and by failing to allege wrongful conduct causing injury in Nevada or occurring in  
4 Nevada.  
5

6 Finally, this action could be brought in the State of Florida or Massachusetts where the  
7 bulk of the defendants, who are alleged to be residents of the United States and who are alleged  
8 to have acted improperly, reside or conduct business activities. See Amended Complaint, ¶¶ 3d,  
9 3e and 3f. Thus, the requirements of 28 U.S.C. §§1391(a)(3) and 1391(b)(3) are not satisfied  
10 because there are plainly other districts in which this action can be brought.  
11

12 Plaintiff's selection of the District of Nevada appears solely to be aimed at  
13 inconveniencing the defendants. Plaintiff is a foreign corporation which resides in the British  
14 West Indies. All of the defendants alleged to be actually responsible for the wrongs complained  
15 of are residents of distant states or Caribbean countries. None of the actions causing damage to  
16 Plaintiff from which its claim arises are alleged to have been taken in Nevada and none of the  
17 injuries suffered by Plaintiff are alleged to have been incurred by Plaintiff in Nevada. The injury  
18 it allegedly suffers, the loss of its reputation, is one which, if it actually had occurred, would  
19 evidence itself by monetary damages caused by a loss of students at Plaintiff's campus in the  
20 British West Indies or at its activities conducted in the State of Maine. Where as here the alleged  
21 wrongful actions and damages arising from them do not occur in Nevada, venue does not lie in  
22 this District. See Sutain v. Shapiro and Lieberman, 678 F.2d 115, 117 (9<sup>th</sup> Cir. 1982); Magic  
23 Toyota, Inc. v. Southeast Toyota Distributors, Inc., 784 F.Supp. 306, 318-319 (D.S.C. 1992);  
24 Radical Products, Inc. v. Sundays Distributing, 821 F.Supp. 648, 650 (W.D. Wash. 1992); Meyer  
25  
26

v. Reno, 911 F.Supp. 11, 15 (D.D.C. 1996); Medoil Corp. v. Clark, 753 F.Supp. 592, 597-598 (W.D. N.C. 1990).

**III. PLAINTIFF'S SECOND AND THIRD CLAIMS UNDER THE LANHAM ACT MUST BE DISMISSED FOR FAILURE TO STATE A CLAIM UNDER 15 U.S.C. § 1126(b) & (h).**

Plaintiff, a foreign national, alleges unfair competition under the Lanham Act in Counts II and III of its Amended Complaint.<sup>1</sup> Plaintiff's allegations of unfair competition in violation of the Lanham Act fail to state a claim upon which relief can be granted and must be dismissed because they fail to allege that Plaintiff has standing to proceed under the Lanham Act. See Fed.R.Civ.P. 12(b)(6).

Because SMU is a foreign entity incorporated in the Cayman Islands, (Amended Complaint, ¶ 3a), this Court's analysis of its right to proceed under the Lanham Act must begin with the language of Sections 1126 (b)<sup>2</sup> and (h)<sup>3</sup>, pursuant to which Congress provided the only cause of action for foreign nationals under the Lanham Act. Sections 1126 (b) and (h) extend the protections and remedies of the Lanham Act for unfair competition only to a foreign national whose "country of origin is a party to any convention or treaty relating to ... unfair competition, to which the United States is also a party, or extends reciprocal rights to nationals of the United States by law." 15 U.S.C. §1126 (b). See Larsen v. Terk Technologies Corp., 151 F.3d 140, 145-46 (4<sup>th</sup> Cir. 1998). See also Scotch Whiskey Ass'n v. Majestic Distilling Co., 958 F.2d 594.

<sup>1</sup> In Count II, Plaintiff alleges unfair competition arising from alleged false and misleading statements under 15 U.S.C. § 1125(a). In Count III, Plaintiff alleges unfair competition arising from allegedly false statements of characteristics or origin under the same statute.

<sup>2</sup> 15 U.S.C. §1126, also referenced as Section 44 of the Lanham Act, provides that "[a]ny person whose country of origin is a party to the convention ... shall be entitled to benefits [under §1126] to the extent necessary to give effect to any provision of such convention ..." 15 U.S.C. §1126(b).

<sup>3</sup> 15 U.S.C. §1126(h) provides that any person covered by §1126(b) "shall be entitled to effective protection against unfair competition, and the remedies ... shall be available so far as they may be appropriate in repressing acts of unfair competition."

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597 (4<sup>th</sup> Cir. 1992)(Section 1126(b) of the Lanham Act gives those persons whose country of origin is a party to a treaty relating to unfair competition those benefits of Section 1126 necessary to give effect to the Treaty).

15 U.S.C. §1126(h) in turn authorizes foreign nationals to assert claims of unfair competition if they have such rights under 15 U.S.C. §1126(b). The legislative history of Section 1126 was discussed in detail and summarized in the case of L'aiglon Apparel v. Lana Lobel, Inc., 214 F.2d 649, 654 (3<sup>rd</sup> Cir. 1954):

This legislative history lends support to the following inferences and interpretations limiting Section 44[Section 1126]:

1. Congress, by its discussion and rejection of the broad provision of H.R. 4744 of the 76th Congress declaring all acts of unfair competition to be unlawful, revealed an unwillingness to give federal courts jurisdiction of unfair competition claims [by foreign corporations] to the full extent of its power to regulate commerce.
2. The intent of Congress was to implement international agreements which were not self-executing and which varied in their coverage of practices in the field of unfair competition.
3. By rejecting the suggestion that the unfair competition provision be placed in the section providing remedy to registrants alone and by placing it in a separate section in accordance with the suggestion that some conventions prohibit unfair competition in respects other than the marking of goods, Congress manifested an intent to fashion a remedy to coincide with rights growing from the respective international agreements.
4. The effective protection against unfair competition' granted in subsection (h) is coextensive with the varying substantive provisions of the international agreements....

In further analyzing the legislative history of this provision, the L'aiglon Apparel Court concluded: " [T]here was no need for such a limited declaration of jurisdiction over unfair competition [claims by foreign nationals] if the Lanham Act had covered ... countless other [situations] in a much broader grant of jurisdiction over all unfair competition in commerce." 214 F.2d at 654.

Thus, the unambiguous statutory language and the legislative history of Section 1126 of the Lanham Act creates a substantive federal law of unfair competition which limits those foreign nationals who are entitled to the benefits of the Lanham Act to those who have rights under treaties referenced in Section 1126 (b). See L'aiglon Apparel, 214 F.2d at 654. See generally Pagliero v. Wallace China Co., 198 F.2d 339 (9<sup>th</sup> Cir. 1952). Put simply, the purpose of 15 U.S.C. §1126 (h) is to extend protection to any foreign national whose country of origin is party to any convention or treaty relating to the repression of unfair competition and who meets the other requirements set forth in Section 1126(b). El Greco Leather Products Co. v. Shoe World, Inc., 599 F.Supp. 1380, 1391 (E.D.N.Y. 1984), reversed on other grounds, 806 F.2d 392 (2<sup>nd</sup> Cir. 1986). If Congress intended to give foreign nationals the unlimited right afforded by 15 U.S.C. §1125 (as claimed by SMU), there would have been no need for Congress to have enacted either 15 U.S.C. §1126 (b) or 15 U.S.C. §1126 (h), which afforded rights under the Lanham Act only to a subset of foreign nationals - those from countries with qualifying treaties.

In the instant case, Plaintiff is a foreign national. However, Plaintiff has not alleged the existence of any convention or treaty relating to the repression of unfair competition to which both the United States and the Caymen Islands are parties. Absent such an allegation, which is a necessary element to enable a foreign national to seek unfair competition protection under the Lanham Act, Counts II and III must be dismissed. This case can be contrasted with the Larsen case in which the Court permitted the case to proceed because the Plaintiff was a Danish national and the United States and Denmark were both parties to the International Convention for the Protection of Industrial Property of 1883. See Larsen, 151 F.3d at 145-46. See also Toho Co. Ltd. v. Sears, Roebuck & Co., 645 F.2d 788, 792-93 (9<sup>th</sup> Cir. 1981)(federal jurisdiction existed for foreign national based on treaty involving United States and Japan); Maison Lazard v.

1 Manfra, Tordella & Brooks, 585 F.Supp. 1286, 1289 (S.D.N.Y. 1984) (foreign national could  
 2 bring action under the Lanham Act because the United States and France were signatories to the  
 3 Paris Convention). Thus, unlike Larsen, Toho, and Maison, Plaintiff, as a foreign national, has  
 4 failed to allege the necessary elements to bring an unfair competition under the Lanham Act and  
 5 its Second and Third Claims must therefore be dismissed pursuant to Fed.R.Civ.P. 12 (b)(6).  
 6

7 **IV. SMU'S FIFTH CLAIM FAILS TO STATE A CLAIM FOR RELIEF UNDER THE**  
 8 **NEVADA DECEPTIVE TRADE PRACTICE ACT.**

9 In its Fifth Claim, SMU alleges that Defendant's conduct violates the Nevada Deceptive  
 10 Trade Practice Act, N.R.S. 598(3), (5)(7) and 15. However, N.R.S. Chapter 598 generally  
 11 provides "for a public cause of action for deceptive trade practices." Nevada Power v. Eighth  
 12 Dist. Court, 102 P.3d 578 (2004) (emphasis added), and the Nevada Supreme Court has declined  
 13 to recognize a private cause of action under that statute. Id. 102 P. 3d at 583 n.7. In any event,  
 14 SMU's Amended Complaint fails to allege any conduct within the constitutional reach of the  
 15 Nevada Deceptive Trade Practice Act because it fails to allege that any of the actions which  
 16 allegedly cause damage to SMU occurred in Nevada or that any damages occurred to SMU in  
 17 Nevada. It is of course axiomatic that the state has police power to regulate conduct occurring  
 18 within its borders. See Gonzales v. Oregon, U.S. S.Ct. No. 04-623 (January 17, 2006). "Within  
 19 its police power, the Legislature may regulate commercial and business affairs in order to  
 20 promote the health, safety, morals and general welfare of its citizens and to protect its citizens  
 21 from injurious activities." State Ex Rel List. v. AAA Auto Leasing, 93 Nev. 483, 486; 568 P.2d  
 22 1230 (1977). It is equally axiomatic that the state's police powers do not extend to conduct  
 23 occurring outside its jurisdiction which is not alleged to have caused damages within its  
 24 jurisdiction. "A state cannot impose punitive sanctions for conduct that affected other states but  
 25 had no impact on the ...state or its residents." White v. Ford Motor Co., 312 F.3d 998, 1016 at  
 26  
 27  
 28

n. 68 and 1018-1020 (9<sup>th</sup> Cir. 2003). Since SMU's Amended Complaint totally fails to allege any act or conduct which warrants extension of the police powers of the State of Nevada to the Defendants, SMU's Fifth Claim based on the Nevada Deceptive Practice Act must be dismissed pursuant to Fed.R.Civ.P. 12(b) (6) for failure to state a claim upon which relief can be granted.

**V. SMU'S SIXTH CLAIM FAILS TO STATE A CLAIM FOR RELIEF UNDER THE CALIFORNIA COMPUTER CRIMES ACT.**

SMU's Sixth Claim fails to state a claim under the California Computer Crimes Act because the Amended Complaint fails to allege the facts necessary to establish standing to proceed in a civil action under that Act. California Penal Code Section 502(e) (1) provides:

(1) In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, or data may bring a civil action against any person convicted under this section for compensatory damages, including any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, damaged, or deleted by the access. For the purposes of actions authorized by this subdivision, the conduct of any unemancipated minor shall be imputed to the parent or legal guardian having control or custody of the minor, pursuant to the provisions of Section 1714.1 of the Civil Code. (Emphasis added).

The Amended Complaint does not allege that SMU's claims are premised upon its ownership or lease of any "computers, computer systems, ... network, ... program or data." Nor does it allege (because it has not occurred) that any defendant has been "convicted under [the California Computer Crimes Act]." The Amended Complaint also does not allege that any injury occurred in the State of California as a result of the alleged violations of the California Penal Code. The Amended Complaint thus does not state a claim under the California act because it fails to allege an impact on California or its residents. White v. Ford Motor Co., 312 F.3d at 1016, n. 68 and 1018-1020. See discussion at pp. 10-11, supra. Therefore, the Amended

1 Complaint fails to state the prerequisite for a civil action under that statute and a claim for relief  
 2 under that statute and the Sixth Claim must be dismissed pursuant to Fed.R.Civ.P. 12(b) (6).  
 3

4 **CONCLUSION**

5 The Amended Complaint in this matter against David L. Fredrick should be dismissed  
 6 pursuant to Fed.R.Civ.P. 12(b)(2) because this Court lacks personal jurisdiction over Fredrick.  
 7 Alternatively, the Amended Complaint also fails to state claims for relief upon which relief can  
 8 be granted in its Second, Third, Fifth and Sixth Claims and those Claims must be dismissed if  
 9 this Court retains jurisdiction over Fredrick.  
 10

11 DATED this 14<sup>th</sup> day of February, 2006.

12 DAVID L. FREDRICK,  
 13 By His Attorneys,

14 

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

ST. MATTHEW'S UNIVERSITY	)	Case No.: CV-S-05-0848-RCJ(LRL)
(CAYMAN) LTD., a Cayman Islands company,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
SABA UNIVERSITY SCHOOL OF	)	
MEDICINE FOUNDATION, a Netherland-	)	
Antilles company; MEDICAL UNIVERSITY	)	
OF THE AMERICAS, a St. Kitts & Nevis	)	
company; EDUCATION INFORMATION	)	
CONSULTANTS, INC., a Massachusetts	)	
corporation; EDUCATIONAL INTERNATIONAL	)	
CONSULTANTS, LLC, a Massachusetts	)	
limited liability company; PATRICIA L. HOUGH,	)	
M.D. an individual, and d.b.a. "Saba University	)	
School of Medicine"; DAVID L. FREDRICK, an	)	
individual; PANKAJ DESAI, M.D., an individual;	)	
ASSOCIATION OF AMERICAN	)	
INTERNATIONAL MEDICAL GRADUATES,	)	
INC., a Nevada corporation, a.k.a.	)	
"aaimg@yahoo.com"; THOMAS MOORE, M.D.	)	
a.k.a. "presaaimg@hotmail.com" and	)	
"crocdoc2004@netzero.net," an individual;	)	
SARAH B. WEINSTEIN a.k.a.	)	
"execsecaaimg@hotmail.com," an individual;	)	
RACHAEL E. SILVER, an individual; and	)	
DIEDRE MOORE, an individual,	)	
	)	
Defendants.	)	

AFFIDAVIT OF DAVID L. FREDRICK

I, David L. Fredrick, being sworn under oath depose and state as follows:

1. I have reviewed the Amended Complaint in this matter in which I have been named as a Defendant.

2. My primary residence is in Sarasota County, Florida, as alleged in the Amended Complaint.

3. I have never engaged in business with or solicited business from anyone in the State of Nevada and have only been in Nevada twice, once for an educational conference and once for a wedding.

4. I have never had any involvement in the activities of American International Medical Graduates, Inc. ("AAIMG"). I have never had or exercised any authority over AAIMG. I had no involvement in the incorporation of AAIMG.

5. I have not participated in, conspired to commit, authorized, aided, abetted, furnished the means to perform, advised or encouraged any of the activities which the Amended Complaint alleges were performed by the other defendants in this matter in connection with the formation of AAIMG or in connection with statements made and actions allegedly taken by them and/or AAIMG with respect to St. Matthew's University (CAYMAN) LTD.

6. I categorically deny any acts of wrongdoing on my part directed towards St. Matthew's University.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 9th DAY OF  
FEBRUARY, 2006.



DAVID L. FREDRICK

THE COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this 10 day of Feb 2006, before me, the undersigned notary public, personally appeared DAVID FREDERICK, proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by a federal or state governmental agency, ☐ oath or affirmation of a credible witness, ☒ personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document(s), and acknowledged to me that (he/she) signed it voluntarily for its stated purpose.  
~~(as attorney in fact for \_\_\_\_\_).~~

  
\_\_\_\_\_  
Notary Public  
(official seal)

My commission expires:

MICHAEL P. ANGELINI  
NOTARY PUBLIC  
MY COMMISSION EXPIRES: DECEMBER 17, 2010

**CERTIFICATE OF MAILING**

I hereby certify that on this 14<sup>th</sup> day of February, 2006, I did deposit in the United States

Post Office, with postage fully prepaid thereon, a copy of the above and foregoing

**DEFENDANT DAVID L. FREDRICK'S MOTION TO DISMISS PLAINTIFF'S**

**COMPLAINT; AFFIDAVIT OF DAVID L. FREDRICK** addressed to:

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An Employee of ALVERSON, TAYLOR,  
MORTENSEN & SANDERS

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